IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 369 OF 2004

Tanaji s/o Ramji Gole .... appellant

versus

The State of Maharashtra ... Respondent.

None for the appellant
Shri V.B.Konde Deshmukh APP for Respondent.

CORAM; V.G. PALSHIKAR &
SMT.NISHITA MHATRE,JJ.

DATED; 8TH NOVEMBER, 2006.

JUDGMENT: (Per Palshikar, J.)

1. This is an appeal by the accused who stands convicted under section 302 of the Indian Penal Code for causing homicidal death of one Baliram Deu Gole. The accused was not represented by any advocate. Therefore adv. Mrs. Smita Kadu Gawai was appointed to defend the accused. However, inspite of the matter being listed on the weekly board, none appears for the accused. Taking into consideration the fact that the appeals from jail are pending for last seven years, it should be causing unnecessary delay and injustice to those who are languishing in jail for all these years. We, therefore deem it just and proper to decide the

matter on merits on reappreciation of the evidence and the entire record before us. The learned Additional Public Prosecutor appearing on behalf of the State has taken us through the entire evidence and our reappreciation of evidence stated briefly disclosses the prosecution case as under:

2. On 2-2-2002 at 9.00 p.m. the informant Raghunath Dhondu Parve and the deceased Baliram Deu Gole had gone to the field for guarding the crop. Both of them had slept on the cot. They had chit-chat for some time. After mid night at 1.15 p.m. the deceased shrieked loudly. Informant got up and found the accused standing by the side of the deceased with a scythe in his hand. The informant told him not to assault, thereupon the accused retorted thathe would also kill him. On hearing this, the informant jumped from the cot and ran away. He then went to the police patil of the village and informed him about the incident. Both of them went to the house of P.w.Shivaji. About 4 to 5 persons accompanied them. All the persons then came to the spot. The accused was standing on the spot. When those persons tried to approach the spot, the accused threatened them to kill them, if they would come forward. Accused then made his escape good. After some time all the persons who had gone to the spot came near the deceased. They found that the deceased had

sustained bleeding injuries on his neck and face and was lying in the pool of blood. Informant and the others then went to Tala police out post which comes under the jurisdiction of Police Station Mangaon. Informant then lodged the complaint in this respect.

3. On the basis of this complaint investigation was undertaken and on completion of investigation the accused was prosecuted under section 302 of IPC.

4. The prosecution examined five witnesses to prove its case. The learned trial Judge on appreciation of that evidence convicted the accused as aforesaid.

5. We have to examine the correctness of this order in the light of the evidence as re-appreciated by us with the assistance of the Government Pleader. P.w.1 is Dr. Rambhau who conducted the post martum on 3-2-2002. He has in his deposition clearly stated that the death of the victim was caused due to injuries inflicted to him prior to his death. He thus proved that the victim met homicidal death on the date of the incident.

6. P.w.2 Raghunath Dhondu Parve is an eye witness who described the entire incident. He has deposed before the police that he and the victim had gone to the field to watch the crop and he slept there. Around 1.15 in

the night the witness heard cries of the victim and therefore got up and found that the accused holding a scythe and assaulting the victim. He has narrated in his deposition how he lodged the report with the police, how the accused was all along present in the field of the crop. He has identified the clothes of the deceased and also identified the weapon of assault and there is nothing in the cross examination which would disbelieve the testimony of this witness.

7. Apart from the fact that the testimony of P.w.2 as an eye witness is trustworthy, P.w.3 Santosh who is examined as panch, proves the recovery of the weapon at the instance of the accused. He has proved the panchanama. This weapon recovered was sent to expert for analysis and testing the blood on it which was accordingly done and was found that the blood stains found on the weapon was of Group 'B'. It is proved by Exh.24, item no.10 which was sent to C.A. for analysis and the report shows that Koyta had human blood on it and on analysis it was found of group 'B'. The prosecution has also proved on record Exh.31. It also speaks of analysis of blood of the victim and the same was identified as of group 'B'. The prosecution has thus proved via P.w. 3 and Exhs. 24 and 31 that the weapon of the offence was recovered at the instance of the accused, that it was stained with blood and that

blood was belong to group ‘B’ and the blood group of the victim was ‘B’. This infringing documentary evidence fully corroborates the oral testimony of P.w.1. Apart from that the deposition of P.w.1 Dr. Rambhau who conducted the post martum also verifies that oral testimony of P.w.2 when it describes the assault and the injuries are found to exist at the places where the accused is said to have assaulted the victim.

8. P.w.4 Suresh is the investigating officer and P.w.5 is a witness who found the accused present at the spot when the police arrived. The learned Judge has appreciated all these evidence and has come to the conclusion of guilt and our re-appreciation is also on the same footing. The prosecution has thus proved beyond reasonable doubt all the circumstances. The ocular testimony of P.w.2 completely corroborating the testimony of P.ws. 1,3 and 5 and also Exhs. 24 and 31, which completes the chain of circumstantial evidence which positively support the eye witness account of P.w.2. In such circumstances, it cannot be said that the order of conviction is in any manner found vitiated. The same is liable to be confirmed and is hereby confirmed. As a consequence the appeal is dismissed.

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